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THE TAFT-HARTLEY ACT AND UNION POLITICAL CONTRIBUTIONS AND EXPENDITURES

By JOSEPH E. KALLENBACH*

AMONG the many features of the Labor-Management Relations (Taft-Hartley) Act of 1947 which have aroused resentment within the ranks of organized labor the section which bars financial contributions and expenditures by labor unions in connection with federal elections stands high on the list. This provision in the law¹ represents the culmination of a ten-year campaign by certain elements in Congress to place labor unions under restraints similar to those imposed upon business corporations with respect to use of their funds for political objectives. The main justification for such a limitation upon labor unions was asserted to be the protection of the rights of those members who, entertaining political views contrary to those of the majority, or at any rate, of the leadership, found themselves nevertheless involuntarily contributing through payment of dues and assessments to the promotion of political programs to which they were actually opposed.

EMERGENCE OF THE PROBLEM

Political activity by labor unions on a scale sufficient to give rise to a demand for regulative legislation dates from the 1936 presidential election. Prior to that time labor unions had on occasion made direct money contributions to candidates and parties in national elections or had made expenditures on behalf of candidates they favored. The amounts involved were comparatively small, however, and such contributions and expenditures did not

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1. Public Law 101, 80th Cong., 1st Sess., sec. 304; 61 Stat. 159 (1947).

2 U. S. C. A., sec. 251 (1947 Supp.); 18 U. S. Code, sec. 610 (1948 rev.).

have significant influence on the final results.² The report of the Special Senatorial Committee to Investigate Campaign Expenditures in the 1936 elections disclosed that labor unions contributed and loaned approximately \$770,000 to the Democratic National Committee and other political organizations supporting Democratic candidates.³ Taking note of this new development, the Special Committee, of which Senator Loneragan, of Connecticut, was chairman, recommended legislation broadening the applicability of a clause in the Federal Corrupt Practices Act of 1925 which prohibited national banks and business corporations from making contributions to political parties or candidates in national elections, so as to include "all organizations, associations, or enterprises, incorporated or otherwise, whose aims or purposes are the furtherance of group, class, or special interests."⁴ The Committee's recommendation was thus an exceedingly sweeping one. Although it obviously had relation to its findings regarding the part which labor union funds had played in the 1936 election, it did not mention labor organizations explicitly as the "associations" against which the proposal was aimed. It would have extended the bar on contributions to self-interested political pressure groups of all kinds, whether composed of businessmen, professional people, farmers, or unionized laborers.

This fact doubtless explains why there was no enthusiasm displayed immediately in Congress to act upon the Committee's recommendation. The issue, so far as it concerned labor unions, was first gingerly approached in a bill to amend the Wagner Labor

2. Cf. Overacker, "Labor's Political Contributions," 54 Pol. Sci. Q. 56-68 (March, 1939) ; also ch. III in *Presidential Campaign Funds* (1946) by the same author, which is an excellent treatment of the general subject of trade union funds in relation to political campaign finance. According to this source the American Federation of Labor made expenditures for political purposes totaling about \$95,000 in the period from 1906 to 1925. The major part of this sum was expended in the elections of 1920 and 1924. Purposes for which expenditures were made in this period covered mainly such items as postage, leaflets, and expenses of speakers. Labor union sources contributed some \$7,500 to the LaFollette National Progressive Committee in 1924, and other labor union funds were expended directly in LaFollette's behalf in that year.

3. Sen. Rep. No. 151, 75th Cong., 1st Sess. 127-133 (1937). According to the Committee's report the chief labor union contributor was the United Mine Workers of America, which contributed approximately \$380,000 to various political organizations favoring the Democratic party. Chief recipients of these contributions were the Democratic National Committee and Labor's Non-Partisan Political League. In addition this union made a loan of \$50,000 to the Democratic National Committee and one of \$40,000 to the Pennsylvania State Democratic Committee. Records of the Democratic National Committee show that the loan to it was repaid in 1937 and 1938.

4. *Id.* at 135.

Relations Act offered by Senator Vandenberg, of Michigan, in 1937. One section of the Vandenberg proposal would have declared it to be an unfair labor practice for a labor organization to "make any compulsory assessment, or require any contribution, for political purposes."⁵ The bill was not reported out of committee. Two years later Senator Tydings, of Maryland, succeeded in having inserted into a bill for financing a program of self-liquidating federal works projects a clause declaring it to be unlawful for any person to contribute to any candidate for political office or to any political committee or party "any amounts paid as dues, assessments, or fees by members of any organization, lodge, or group, unless said dues, assessments, or fees were paid by such members for the sole purpose of aiding a particular candidate, political committee, or political party, and such members had actual knowledge that the amounts so paid by them were to be used for such purpose." This clause was accepted without debate and included in the bill as it passed the Senate.⁶ No action was taken upon it by the House, since the bill of which it was a part was not considered. Senator Tydings' proposal, it will be observed, was less restrictive in its terms than the legislation recommended by the Lonergan Committee; but it was in line with the Committee's views in that it would have applied to contributions by all types of pressure groups and associations, and was not aimed solely at labor organizations.⁷

With the enactment of the Second Hatch Act in 1940 political contributions by labor unions and other kinds of associations were for the first time brought under legal limitation. Section 13 of that Act⁸ set a maximum limit of \$5,000 on the amount any person might contribute during a calendar year to any candidate for elective federal office or to a national political committee. It also prohibited the purchase of goods, commodities, advertising, or articles of any kind where the proceeds of such purchase inure directly or indirectly to the benefit of any such candidate or political committee. A "person" to whom these restraints were made applicable was defined as an "individual, partnership, committee, association, corporation or any other organization or group of persons"; and the term "contribution" was defined as "a gift,

5. S. 2712, 75th Cong., 1st Sess. (1937).

6. 84 Cong. Rec. 10436 (1939).

7. From the remarks of Senator Tydings, it appears that he had specifically in mind in proposing the amendment the Pennsylvania Manufacturers Association as well as labor unions. *Id.* at 10304.

8. 54 Stat. 767 (1940), 18 U. S. C. A., sec. 61m (1947 Supp.), 18 U. S. Code, sec. 608 (1948 rev.).

subscription, loan, advance, or deposit of money, or anything of value." Although the House during consideration of the Hatch Bill rejected an amendment offered by Representative Hoffman, of Michigan, which by specific mention would have brought labor unions under this limitation,⁹ the language used in setting a ceiling on individual contributions was broad enough to cover them. This restriction proved to be no serious barrier to labor's support of candidates and parties of its choice in the national elections of 1940. Smaller contributions by local unions well within the \$5,000 limitation were made rather than larger ones by the national labor organizations.¹⁰ The Special Senatorial Committee to Investigate Campaign Expenditures in 1940, headed by Senator Gillette, of Iowa, made no recommendations looking toward placing additional restraints on political activities by labor unions. The issue was kept alive, however, by the introduction of various bills in 1941 and 1942 proposing to make political contributions by labor unions illegal.

Legislation of this nature eventually was approved by Congress in 1943 with the passage of the War Labor Disputes (Smith-Connally) Act.¹¹ This statute was largely the product of rising resentment against John L. Lewis, who had defied the authority of the War Labor Board in carrying through to a successful conclusion a strike by the United Mine Workers Union. During House deliberations upon this measure, which had already passed the Senate, Representative Harness, of Indiana, offered a substitute for the bill as reported from committee, one feature of which was a proposal to add "labor organizations" to the section of the Federal

9. 86 Cong. Rec. 9456-9458 (1940). Representative Hoffman also proposed to place "labor organizations and any official or employee thereof" under the same restraints as those imposed by the Hatch Act upon federal and certain state administrative employees with respect to using their official authority to interfere with or to affect the results of federal elections. The Hoffman amendments were rejected in a division vote 86 to 50.

10. The Democratic National Committee reported 113 labor union contributions in the 1940 election, totaling approximately \$83,000. This amounted to 6.2% of that Committee's contributions as compared with 5.1% of its contributions from this source in 1936. Labor unions also contributed more than \$50,000 of the total receipts of the National Committee of Independent Voters for Roosevelt in the 1940 election. Because of John L. Lewis' endorsement of Wendell Willkie for President, the United Mine Workers, which had given important financial support to the Democratic cause in 1936, was not a leading source of funds. One Tennessee local of this union made a contribution of \$100 to the Democratic National Committee; but Labor's Non-Partisan League, essentially an adjunct of the United Mine Workers Union, was listed as making an expenditure of \$2,000 on behalf of the Republican ticket. See Overacker, "Campaign Finance in the Presidential Election of 1940," 35 Am. Pol. Sci. Rev. 701 (1941) and Sen. Rep. No. 47, 77th Cong., 1st Sess. 115 (1941).

11. 57 Stat. 163 (1943), 50 U. S. C., secs. 1501-1511 (1946).

Corrupt Practices Act of 1925 prohibiting political contributions by corporations.¹² The Harness substitute, with this feature included, was accepted by the House,¹³ and by the joint conference committee to which the bill was then referred. During consideration of the conference committee report on the Smith-Connally Bill in the Senate, this particular provision was sharply assailed by several Senators.¹⁴ It was criticized as being irrelevant to the bill's major purpose; it was also alleged to be discriminatory in that it proposed to lay restraints on labor groups which did not apply to other associations, particularly those representing management interests. To meet these objections Senator Hatch, of New Mexico, in urging acceptance of the conference report, announced that he intended to offer a new bill which would broaden the prohibition on political contributions to include employer groups.¹⁵ With an understanding that this would be done the conference report was accepted by the Senate. A presidential veto followed, but it was overridden by Congress. President Roosevelt in his veto message cited the clause barring political contributions as one of the objectionable features. This clause was not only irrelevant to the bill's major objective, he maintained, but if there was merit in such a prohibition it should be enacted as permanent legislation and "careful consideration should be given to the appropriateness of extending the prohibition to other non-profit organizations."¹⁶

Subsequently in the same session Senator Hatch introduced a bill which would have amended the Federal Corrupt Practices Act further by placing a ban on political contributions by "management organizations." A "management organization" was defined as "any business league, chamber of commerce, board of trade, employers' organization, trade association, manufacturers' association, or any other committee, association, organization or group representing or designed to further the interests of any group of persons . . . engaged in the operation or management of one or more types of business enterprise." This bill was reported favorably and passed without debate in the Senate on February 15, 1944.¹⁷ It failed to be acted upon in the House.

12. 89 Cong. Rec. 5328, 5390 (1943).

13. A proposal by Representative Hancock, of New York, to delete the anti-political contributions clause was defeated on a division vote, 156 to 83. *Id.* at 5390.

14. *Id.* at 5754 ff.

15. *Id.* at 5721.

16. *Id.* at 6488.

17. 89 Cong. Rec. 6503 (1943); 90 Cong. Rec. 1643 (1944); Sen. Rep. No. 412, 78th Cong., 1st Sess. (1943).

ORIGINS OF THE TAFT-HARTLEY ACT PROVISION

In a number of respects the Smith-Connally Act provision¹⁸ fell short of attaining the objective of complete proscription of the use of labor union funds in elections. In the first place it was only temporary legislation, since the law of which it was a part, by its terms, was to expire within six months after termination of hostilities as determined by the President, or sooner, upon the passage of a concurrent resolution by Congress. By virtue of the President's proclamation declaring an end to hostilities on December 31, 1946,¹⁹ this termination date was June 30, 1947.²⁰ Another shortcoming was that this section of the War Labor Disputes Act did not apply specifically to primary elections or other nominating procedures. Furthermore, it had no direct bearing upon labor union contributions in connection with purely state or local elections or primaries. Still another loophole was the failure of the federal statute to state explicitly that direct expenditures of money by labor unions on behalf of favored candidates or political parties were prohibited.

These avenues for circumventing the policy of political "sterilization" of labor union funds were quickly seized upon by certain labor leaders. Having been advised by legal counsel that this section of the War Labor Disputes Act did not prevent labor unions from giving aid to candidates in state and local primaries and elections and in national primary or pre-convention contests, or from making direct expenditures in any election on behalf of candidates or programs favored by them,²¹ labor organizations affiliated with the CIO, acting through the executive board of that body, set up a Political Action Committee on July 7, 1943. Its function was to organize, coordinate, and direct political activities in support of the objectives of CIO unions in the elections of 1944. CIO labor unions made contributions from their treasuries for financing the work of the Committee, which was placed under the direction of Sidney Hillman, president of the Amalgamated Clothing Workers Union.

18. Section 9 of the Act; 50 U. S. C., sec. 1509 (1946).

19. Proc. 2714, 12 Fed. Reg. 1 (January, 1947).

20. It should be observed that Senator Hatch's bill in 1944 to extend the restriction on political contributions to employer associations, which failed because of House inaction, *supra* p. 5, would have made permanent legislation of the section of the War Labor Disputes Act prohibiting political contributions by labor unions. Had this bill been enacted in 1944 it might have averted reopening the issue in 1947 when legislation to continue a system of governmental control over labor-management relations was under consideration.

21. Cf. the opinion by Lee Pressman, counsel for the CIO, 12 Labor Relations Reference Manual, 2544-2545 (1943).

By early 1944 the CIO-PAC had received contributions from affiliated unions to the amount of \$670,000. These funds it began to spend in the furtherance of union political objectives by promoting the nomination of presidential and congressional candidates it deemed to be friendly to labor's interests. In July, 1944, these activities became a subject of inquiry before the Senate's Special Committee to Investigate Campaign Expenditures in the 1944 election. Hillman appeared voluntarily before this Committee, which was headed by Senator Green, of Rhode Island, and gave a full report on the organization and activities of the CIO-PAC up to that point.²² Hillman continued to maintain the point of view that the anti-political contributions clause of the War Labor Disputes Act had no bearing upon the activities which his organization had so far been carrying on in connection with congressional primaries and the national party conventions and that it did not bar direct *expenditures* of union funds on behalf of favored candidates even in the general election. Nevertheless, soon after this hearing he sent out orders to the regional officers of the PAC directing them to cease making expenditures in the national campaign from funds derived from union treasuries. Funds of this nature were thereafter to be spent only in connection with state and local elections. To support continued activity of the PAC in the national campaign, funds were to be sought through voluntary contributions from union members. Financed in this manner the CIO-PAC and its affiliate, the National Citizens Political Action Committee, played an active and important role in the congressional and presidential campaigns in 1944.²³ The final report of the Green Committee exonerated the CIO-PAC of any charge of clear-cut violation of the political contributions section of the War Labor Disputes Act;²⁴ but these developments in the 1944 campaign gave rise

22. Hearings before the Special Committee to Investigate Presidential, Vice Presidential and Senatorial Campaign Expenditures, 1944, pt. I, July 13, 1944, 78th Cong., 2nd Sess. Hillman reported that approximately \$190,000 of the \$670,000 received from trade union sources by the CIO-PAC had been expended by July, 1944, in connection with congressional primary elections and national pre-convention activities.

23. Cf. Overacker, *Presidential Campaign Funds* 57 ff (1946); Gaer, *The First Round: The Story of the CIO-PAC* (1944); Barbash, "Unions, Government, and Politics," 1 *Industrial and Labor Relations Review*, 66, 73 ff (1947).

24. Sen. Rep. No. 101, 79th Cong., 1st Sess. 23 (1945). According to the Committee's report, the CIO-PAC raised approximately \$1,025,000 and spent about \$950,000. Its affiliate, the NCPAC, raised \$380,000 and spent \$378,000. About \$600,000 of the CIO-PAC's contributions came from trade union treasuries; the remainder was raised through individual contributions from labor union members. There was a surplus of about \$170,000 in the trade union fund account, as these funds were used after July 23 only in connection with state and local elections.

to a demand from certain quarters for adoption of a more stringent regulatory law on the use of labor union funds in connection with elections.

Two views regarding a future course of action were reflected in the Green Committee report. The Republican members of the Committee, Senators Ball, of Minnesota, and Ferguson, of Michigan, urged amendment of existing federal corrupt practices legislation so as to prohibit political expenditures by labor unions and corporations in connection with federal elections.²⁵ The three Democratic members, Senators Green, Tunnell, of Delaware, and Stewart, of Tennessee, opposed this approach. They recommended placing main reliance upon full and prompt publicity of individual and group campaign expenditures and contributions as a deterrent to improper action. In criticism of the approach suggested by the minority members they pointed out the practical difficulty of drawing a proper line of demarcation between expenditures for legitimate educational or informational purposes and those for political purposes.²⁶ Bills representative of the respective viewpoints of the majority and minority members of the Committee were introduced in the 79th Congress,²⁷ but no action was taken upon them.

Following the 1946 elections both the House and Senate special committees which investigated campaign expenditures in that year made recommendations looking toward a tightening of federal corrupt practices act restrictions, including regulations relating to campaign contributions and expenditures by labor unions.²⁸ The political expenditures section of the Taft-Hartley Act was in part a

25. *Id.* at 24, 83.

26. *Id.* at 83-84.

27. Representative of the views of the majority was S. 1261, introduced by Senator Green in 1945. His bill would have made permanent the temporary limitation upon labor union contributions to parties and candidates, and would have extended this prohibition both as to labor unions and corporations, to the nominating stages in national elections. S. 1487, introduced in the same session by Senator Wiley, of Wisconsin, would have carried out the recommendations of Senators Ball and Ferguson by forbidding labor union and corporate political expenditures as well as contributions. It would not have applied these restrictions to primaries and conventions. In explanation of his proposal, Senator Wiley stated that it was aimed particularly at the CIO-PAC, which he expected his bill to put "out of the election business." 91 Cong. Rec. 9762-9764 (1946). For further elaboration of Senator Wiley's views on the issue see 92 Cong. Rec. (App.) 369-371 (1946).

28. H. R. Rep. No. 2739, 79th Cong., 2nd Sess. 39-40, 46 (1946); Sen. Rep. No. 1, pt. 2, 80th Cong., 1st Sess. 38-39 (1947). The House Committee was headed by Representative Priest, of Tennessee; the Senate Committee by Senator Ellender, of Louisiana. Both reports recommended extension of limitations on corporate and union contributions to include expenditures; but the House Committee favored applying the restriction only to general elections while the Senate Committee wished to extend it to primaries and other nominating procedures.

response to these recommendations. As was the case with the similar provision in the War Labor Disputes Act, this section of the Taft-Hartley Act was initiated by the House and acquiesced in by the Senate, apparently with some reluctance.²⁹ This feature was subjected to considerable criticism in the Senate during consideration of the conference report on the bill. Senator Taft, while describing it as a "concession" which the Senate conferees had to make in exchange for concessions on other points by the House delegation, nevertheless defended it vigorously.³⁰ It was accepted without change by the Senate as a part of the completed bill.

President Truman's veto message on the Taft-Hartley Bill³¹ singled out the political contributions section of the measure as particularly objectionable, just as President Roosevelt's veto message had done with respect to the similar clause in the Smith-Connally Bill. But as in the earlier instance, presidential disapproval was unavailing in preventing adoption of the legislation. Thus the experiment in legislative control of political activities of labor unions which had been launched by Congress in 1943 in a tentative form was continued as permanent policy, on a broader and more rigorous basis than before.

COMPARABLE STATE LEGISLATION

The movement to impose restraints by national law upon the use of labor union funds for political purposes, which was ultimately successful in the enactment of section 304 of the Taft-Hartley Act in 1947, has had its counterpart in some degree at the state level. Since 1943 laws of this nature have been passed by five states, *viz.*, Alabama, Texas, Colorado, Pennsylvania, and Delaware. The Alabama statute, enacted in 1943, was the most com-

29. The Hartley Bill, H. R. 3020, as reported from committee contained a section making corporate and union political contributions and expenditures illegal, and extending this prohibition to the nominating stages in national elections. It was accepted without change by the House. The Taft Bill, S. 1126, omitted reference to the matter. However, at the time the Taft-Hartley Bill was being considered by the Senate, a bill, S. 1173, sponsored by the members of the Senate Committee on Campaign Expenditures in 1946, was introduced and referred to the Judiciary Committee. Section 112 of this bill contained substantially the language incorporated in the final version of the Taft-Hartley Bill on labor union and corporate political contributions and expenditures. Cf. remarks of Senator Ellender, 93 Cong. Rec. 6522 (1947).

30. *Id.* at 6436 ff, 6522 ff.

31. *Id.* at 7503. The President's message termed the restriction a "dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of the bill." It also called attention to the vagueness of the language used, pointing out that it would "raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations."

prehensive of these laws in that it applied both to labor organizations and to organizations of employers, and it forbade not only contributions to political parties or candidates but also "expenditure of funds in furtherance of the candidacy of any candidate for public office" by either of such types of organizations. This section of the Alabama statute,³² which dealt generally with the subject of labor organizations, was declared invalid by the Supreme Court of that state in 1944.³³ The Texas law,³⁴ also passed in 1943, prohibited only "financial contributions" by labor unions to political parties or candidates. Its constitutionality has been sustained in the state courts.³⁵ The Colorado statute, adopted in 1943 as a part of the Labor Peace Act, which required labor unions to incorporate, forbade the use of a labor union corporation's funds "directly or indirectly for political purposes of any kind."³⁶ When the section relating to compulsory incorporation of labor unions was invalidated by the Supreme Court of Colorado, the clause relating to the use of labor union funds for political purposes fell with it.³⁷ In 1943 the Pennsylvania law regulating campaign expenditures, which already prohibited contributions from corporations, was revised to include "unincorporated associations . . . except those formed primarily for political purposes" in the list of sources from which candidates or political committees were forbidden to receive contributions or loans.³⁸ Although it did not specifically mention labor associations this amendment to the existing law undoubtedly was meant to cover them. A Delaware law of 1947³⁹ prohibited the making of financial contributions by labor unions to political parties

32. Ala. Code, tit. 26, c. 8, sec. 392 (1945 Supp.).

33. The Court found that inclusion of organizations of employers along with labor organizations in the section dealing with political activities violated the provision in the Alabama Constitution which declares that every law shall relate to only one subject. Since the general subject dealt with by the statute was labor organizations, inclusion of employer organizations in the restrictive provision was not permissible. The regulation applicable to employer organizations paralleled a similar regulation of labor unions; consequently invalidation of the former made it necessary to invalidate the latter, since the two must stand or fall together. *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944); cert. dismissed on other grounds, 325 U. S. 450 (1945).

34. 15 Vernon's Civil Statutes, Anno., Art. 5154a, sec. 4b.

35. *American Federation of Labor v. Mann*, 188 S. W. (2d) 276 (Tex. Civ. App. 1945).

36. Colo. Stat., Anno. (Michie, 1947 Supp.), c. 97, sec. 94 (20) (4) (c).

37. *American Federation of Labor v. Reilly*, 113 Colo. 90, 115 P. (2d) 145 (1944).

38. 25 Purdon's Pennsylvania Statutes, Anno. (1948 Supp.), sec. 3235 (b).

39. Del. Laws 1947, c. 196, sec. 23.

or candidates for campaign expenses; it also prohibited the solicitation of funds by labor unions on behalf of political parties or candidates.

In 1946 an attempt was made to amend by popular initiative the Massachusetts law relating to corporate contributions and expenditures by including within its scope "labor unions or any person acting in behalf thereof." Petitions to bring about a popular vote on the proposal were filed; but before the vote was taken the validity of the proposal was attacked successfully by the State Federation of Labor. The State Supreme Court found the initiated measure to be violative of the guarantees of freedom of press and assembly set forth in the Massachusetts Constitution, and therefore not to be within the power given the electorate by the initiative article of that document.⁴⁰ It was accordingly ruled off the referendum ballot.

SCOPE AND APPLICABILITY

Section 313 of the Federal Corrupt Practices Act, as amended by the Taft-Hartley Act in 1947,⁴¹ sets up prohibitions upon the

40. *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 69 N. E. (2d) 115 (1946).

41. 61 Stat. 159, 2 U. S. C., sec. 251 (1947 Supp.); 18 U. S. Code, sec. 610 (1948 rev.). The provision in the Federal Corrupt Practices Act which the Taft-Hartley clause amends was originally adopted in 1907 at the strong urging of President Theodore Roosevelt. Cf. Sikes, *State and Federal Corrupt Practices Legislation 188-94* (1928). With amendments introduced by section 304 of the Taft-Hartley Act indicated by italics, it now reads:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

making of campaign contributions and expenditures in two different areas of control. National banks and corporations organized under the authority of Congress are forbidden to make contributions or expenditures in connection with any election to any office, national, state, or local, or with any primary, caucus or political convention held to select candidates for public office.⁴² Corporations, in general, and labor organizations are likewise forbidden to make political contributions or expenditures, but only in connection with primaries, conventions and caucuses for nominating candidates for national offices and with general elections at which such officers are chosen. The term "labor organizations" is defined comprehensively, and is not limited merely to those labor unions which fall under the jurisdiction of the National Labor Relations Board by reason of their connection with interstate commerce. Criminal penalties to a maximum of a \$5,000 fine may be assessed against corporations or labor organizations violating the act; and officers of such corporations or labor organizations responsible for permitting violations are made subject to a maximum fine of \$1,000 or one year's imprisonment, or both. Neither the term "expenditure" nor the phrase "in connection with any election" is defined. Obviously both are subject to a wide latitude of interpretation.⁴³

Just what did Congress intend to make criminal by these vague and sweeping prohibitions? Where is the line to be drawn between expenditures made in carrying on legitimate informational and educational activities on the one hand and unlawful expenditures for political purposes on the other? At what point do expenditures for political objectives begin to be expenditures "in connection with" an election? The general objective, as stated by sponsors of this section of the law in Congress, was to "plug up loopholes" which had appeared in the existing laws. Corporations and labor unions were to be placed under equal restraints with respect to giving financial aid to parties or candidates. Indirect political contributions in the guise of expenditures of money were to be made unlawful, as well as direct contributions.⁴⁴ Aside from the question of uncon-

42. A section of the Public Utility Holding Company Act of 1935, it should be noted, prohibits political contributions by registered holding companies or subsidiaries thereof in connection with either nomination or election of any public officers, or to any political party or committee. See 15 U. S. C. A., sec. 791(n). It was held to apply in the election of members of a state legislature in *Egan v. United States*, 137 F. (2d) 369 (CCA 8th 1943), cert. den., 320 U. S. 788 (1943).

43. Cf. Mulroy, "The Taft-Hartley Act in Action," 15 *Univ. of Chi. L. Rev.* 595, at 627 ff (1948).

44. Senator Taft stated the general objective in the following words: "What we are proposing to do is to subject labor organizations to exactly

stitutionality which naturally arises because of the vagueness of the statute in defining the acts which it makes criminal, it must be observed that this provision exhibits a truly remarkable trust in the omniscience of the Department of Justice and the judiciary to determine the actual intent of the legislative body and in their capacity to shape a "blunderbuss" regulation into a workable, fair and effective rule for achieving the desired ends.

Specific evidences of Congressional views concerning the scope and meaning of the prohibitory section are found in the Senate debates when the conference report on the bill was under consideration. Senators Pepper of Florida, Barkley of Kentucky, Kilgore of West Virginia, and Magnuson of Washington, all of whom opposed the measure, raised a number of questions concerning its probable bearing upon various kinds of labor union and corporate activities. They were answered by Senators Taft, Ball, and Ellender, who supported it. In response to questions relative to the applicability of the proposed regulation to the publication of political endorsements in union newspapers and periodicals, Senator Taft expressed the view repeatedly that it would apply if the periodical or newspaper were supported by funds derived from union dues.⁴⁵ Likewise an association which includes corporate members, e.g., the National Association of Manufacturers, could not publish political endorsements in an organ supported out of membership dues.⁴⁶ According to Senator Taft, the prohibitory section would not, however, prevent publication of such endorsements in union newspapers supported by voluntary subscriptions;⁴⁷ nor would it prevent a corporate-owned newspaper from giving editorial support to a candidate or a party so long as it was done in the process of "running a newspaper as a business."⁴⁸ If corporate-owned newspapers or union periodicals containing political endorsements should be given away rather than sold for what they are worth, that would constitute a violation of the law, in the view of both Senator Taft and Senator Ball.⁴⁹ The mere publication of the voting records of members of Congress in a union periodical sup-

the same prohibitions to which corporations have been subjected, and so far as I know, including the things which the original law [i.e., the Federal Corrupt Practices Act as amended by the War Labor Disputes Act] covered but regarding which doubt was raised by labor organizations." 93 Cong. Rec. 6436 (1947).

45. *Id.* at 6436, 6437, 6440. A similar view was expressed by Senator Ellender, *id.* at 6440.

46. *Id.* at 6438.

47. *Id.* at 6437.

48. *Id.* at 6436.

49. *Id.* at 6437.

ported out of union dues or the broadcasting of such information on a corporate-financed news program would not be prohibited unless such reports were "colored" and amounted to an actual "contribution" to particular parties or candidates.⁵⁰ The purchase of political advertising or of radio time for political speech-making out of union funds or corporate funds would be prohibited.⁵¹ Further questioning raised points concerning the applicability of the proposed regulation to expression of political views by corporation-sponsored radio commentators or by newspapers indirectly subsidized through corporate advertising. Senator Taft eventually took refuge in the statement that the particular facts of each case would necessarily be determinative; that there would be borderline cases of "all degrees"; and that such questions of interpretation would have to be left to the courts to determine.⁵²

Opportunity to supply answers on some of these questions has been presented to the courts in two cases to date. Within a few weeks after passage of the act, Philip Murray, President of the CIO, caused to be published in the *CIO NEWS*, a periodical published under union auspices and financed out of members' dues, an editorial endorsing the candidacy of the Democratic nominee at a special election to be held in the Third Congressional District of Maryland on July 15, 1947. A thousand extra copies of the edition containing the endorsement were printed and distributed among union members of the district shortly before the election.

On the basis of assertions made by advocates of the Taft-Hartley Act during Congressional debates, the actions of Murray and the CIO, under the circumstances, were in violation of the law. Murray and the CIO were promptly indicted by a federal grand jury. The District Court, holding that the section of the act relating to political expenditures by a labor union was an unconstitutional infringement on rights guaranteed by the First Amendment, sustained a motion for dismissal of the indictment.⁵³ An appeal from this ruling by the government brought the case before the Supreme Court.

That tribunal unanimously sustained the lower court's dismissal of the indictment; but over the objections of four Justices it based its ruling on the point that the statute did not prohibit an expendi-

50. *Id.* at 6447.

51. *Id.* at 6439, 6440, 6447.

52. *Id.* at 6439.

53. *United States v. Congress of Industrial Organizations et al.*, 77 F. Supp. 355 (D. Dist. of Col., 1948).

ture of union funds in the circumstances of this case.⁵⁴ Mr. Justice Reed, speaking for the majority, chose to adopt a narrow view of the intent of Congress in adding the word "expenditure" to the term "contribution" found in the earlier law. After review of the Congressional hearings and debates on the point, he expressed the opinion that Congress intended by adding "expenditures" to the prohibitory section "to eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of that section."⁵⁵ The learned Justice went on to say, "It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ, or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication. It is unduly stretching language to say that the members or stockholders are unwilling participants in such normal organizational activities, including the advocacy thereby of governmental policies affecting their interests and the support thereby of candidates thought to be favorable to their interests."⁵⁶ Under the well-known rule of strict necessity, it was thus possible for the Court to dispose of the case without considering the constitutional issue upon which the lower court had based its ruling. This question was passed over with no indication of the views of the majority of the Court.

In a separate opinion, Mr. Justice Frankfurter concurred with the majority in its finding on the inapplicability of the statute under the circumstances of the case. He expressed the further view that the manner by which the constitutional issue had been brought to the Supreme Court for decision bordered on collusion. Government counsel, he maintained, had failed in the lower court proceedings to advance "the most effective and the least misapprehending grounds for supporting what Congress had enacted" to meet the contention of unconstitutionality raised by the defense.⁵⁷

In still another opinion, Mr. Justice Rutledge, who was joined by Justices Douglas, Black and Murphy, concurred in the result, but not in the reasoning of the majority on the grounds for sustaining the lower court's dismissal of the indictment. Mr. Justice Rutledge, after a careful and complete survey of the Congressional debates and hearings, concluded that it was the clear intent of Congress to bar expenditures by a labor union in circumstances

54. *United States v. Congress of Industrial Organizations et. al.*, 68 S. Ct. 1349 (1948).

55. *Id.* at 1357.

56. *Ibid.*

57. *Id.* at 1360.

like those of the case at hand. He pointed out that Senator Taft had repeatedly referred to the nature of the *source* of funds and to the necessity for protecting the rights of minority members of unions as guiding principles in determining whether the act should apply in a given situation. Consequently, the acts involved in the case were covered by the statute and the constitutionality issue was properly before the Court.⁵⁸ Turning to this aspect of the case, Mr. Justice Rutledge found that the reasons advanced in support of the restrictive provisions of the statute were not sufficient to justify the resulting curtailment of the rights of free speech, free press, and petition guaranteed by the First Amendment and by the due process clause of the Fifth Amendment. Accordingly, he concluded that the indictment was properly dismissed by the lower court on the ground of invalidity of the statute so far as it dealt with expenditures by labor unions.

The second case which has arisen under section 304 of the Taft-Hartley Act originated in Hartford, Connecticut. In what was reported to be a deliberate attempt to institute a test of the constitutionality of this section of the law, a local union of the Brotherhood of Painters, Decorators and Paperhangers, AFL, in January, 1948, purchased space in the *Hartford Times* for a political advertisement and radio time for a political broadcast over a New Britain, Connecticut, station. The objective of the publicity was to bring about the defeat of Senator Taft for the Republican nomination for President, and to prevent renomination and re-election of those Connecticut Representatives in Congress who voted for the Taft-Hartley Act. The union and its president were indicted. In overruling a motion by the defense to dismiss the indictment, the District Court declared that it was "abundantly plain" that Congress intended to bring such actions within the scope of the law.⁵⁹

58. Justice Rutledge took the majority strongly to task for "rewriting" the statute as a means of evading the constitutional issue. Emphasizing this point in his opinion, Justice Rutledge declared: "I doubt that upon any matter of construction the Court has heretofore so far presumed to override the plainly and incontrovertibly stated judgment of all participants in the legislative process with its own tortuously fashioned view. This is not construction under the doctrine of strict necessity. It is invasion of the legislative process by emasculation of the statute. The only justification for this is to avoid deciding the question of validity." *Id.* at 1365.

59. *United States v. Painters Local Union No. 481*, 79 F. Supp. 516. (July 28, 1948). Hincks, D. J. The constitutional issue was also raised by the defendants on the motion to dismiss; but the Court held that the pertinent provision of the Taft-Hartley Act, in the circumstances of the case, did not violate the First Amendment.

The interpretation given the act by the District Court in this proceeding was undoubtedly in accord with the intent of Congress. If the prohibition on union expenditures for political purposes means anything at all, it certainly covers the making of outlays for objects such as newspaper advertising and radio time. It is difficult, however, to accept the reasoning of the Supreme Court's majority opinion in the *CIO News* case on the scope of the prohibitory section. Had there been no printing and distribution of extra copies of the labor periodical in that case, it would be easier to follow Mr. Justice Reed's reasoning to the conclusion he reaches. When additional expense was incurred by the union in this manner, for the obvious purpose of influencing the result of an election by disseminating an expression of political opinion and a specific endorsement of a candidate for Congress, it would appear that the union was making an "expenditure" of funds in contravention of the law. There is little or no difference between such an expenditure and one made for direct purchase of advertising space or for the printing and distribution of handbills with the same object in view. Both involve the expenditure of union funds for political objectives which presumably some members might not approve. Senator Taft and Senator Ball in the Senate debates both expressed the view that one of the kinds of expenditure at which the provision was directed was the printing and distribution of "throw-away" copies of periodicals containing political endorsements.⁶⁰

It is evident from the tone of the opinions in the *CIO News* case that there was violent disagreement among the Supreme Court Justices over whether it should oblige the litigants by making a ruling on the constitutionality issue. Coming as it would on the eve of a presidential election campaign a pronouncement on this point would be heavily freighted with political significance. The path of narrow construction afforded a way out of the difficulty. It had the happy result of resolving in advance a great many questions which were certain to arise in the immediate future concerning the applicability of the law to the publication of political views

60. 93 Cong. Rec. 6437 (1947). While the *CIO News* case was pending in the District Court the report of the Joint Committee to survey the operation of the Taft-Hartley Act was made. Commenting on this case the report observed that "if the allegations of fact are correct, the case squarely presents the application of the law to a newspaper supported out of general union funds when it goes beyond its usual course of business in support of a candidate for federal public office." Sen. Rep. No. 986, 80th Cong., 2nd Sess. 39 (1948). The defendants in the case made no attempt to controvert the allegations in the indictment.

and endorsements in union-supported and corporate-owned periodicals and newspapers. But in reaching its conclusion the Court, as Mr. Justice Rutledge pointed out in his concurring opinion, rejected as guides to interpretation of the act the principles which advocates of the measure had apparently intended to be governing. The Court ignored the very reasons which sponsors of the section had advanced in justifying it. By giving only a negative answer on the meaning of the term "expenditure" the Court has raised new queries regarding the effect of the prohibitory clause. What it does prohibit—indeed, whether it has added anything of material consequence to the previously existing prohibition on political contributions by labor unions—has yet to be disclosed. No doubt, cases arising during the course of the recent national political campaign will eventually produce more conclusive answers by the Supreme Court on this point.

THE CONSTITUTIONALITY ISSUE

The constitutional basis upon which the anti-political expenditures and contributions provision of the Taft-Hartley Act rests, so far as it concerns labor unions, is the clause in Article I, section 4 of the Constitution which grants to Congress the power to regulate "the times, places and manner of holding elections" of members of Congress and the "necessary and proper" clause of Article I, section 8, which gives Congress a broad implied authority to protect against fraud and corruption the choosing of national officers.⁶¹ The basic constitutional issue posed by the regulation is whether Congress in the exercise of this broad power over federal elections has unduly infringed upon individual rights protected by the First and Fifth Amendments.

A considerable body of judicial opinion has been produced by American courts on the general subject of the constitutionality of state and federal corrupt practices acts.⁶² Through judicial rulings it has been established that Congress, with respect to national elections, and the state legislatures, with respect to public elections generally, have constitutional power to prohibit political contributions by corporations to candidates, parties or political

61. Cf. *Burroughs and Cannon v. United States*, 290 U. S. 534 (1934); *United States v. Classic*, 313 U. S. 299 (1941); *Ex parte Yarbrough*, 110 U. S. 651 (1884).

62. For review and comment on decisions of this nature see the notes in 69 ALR 377 (1930) and 167 ALR 1465 (1947); also Beacham, "Federal Regulation of Political Activity," 19 Miss. L. Jr. 210 (1948) and Heady, "The Hatch Act Decisions," 19 Am. Pol. Sci. Rev. 687 (1947).

committees;⁶³ to limit the amount of money that may be expended by a candidate or a party committee;⁶⁴ to require publicity and an accounting of amounts, sources, and purposes of expenditures by candidates, parties or political committees;⁶⁵ to protect governmental employees against coercion in the raising of campaign funds;⁶⁶ and to restrict engagement in political party affairs by certain classes of governmental officers or employees.⁶⁷ State and federal constitutional guarantees of individual freedom were not considered to have been improperly restricted by legislative restraints of the kind here indicated.⁶⁸ In a number of instances, however, state courts have invalidated certain provisions of state corrupt practices act regulating the amount of money that may be expended by candidates and requiring reports on amounts, sources, and purposes of expenditure; but the grounds for invalidity have lain in the nature of the penalty imposed, the manner of enforcement, or the remedial procedures.⁶⁹

In all of the above-mentioned types of corrupt practices act provisions, it will be noted that the burden of regulation falls primarily upon political parties, political committees, candidates, or governmental officers or employees. Where state laws have attempted to establish limitations on the right of an individual citizen to express and promote his political views, or have sought to "muzzle" even candidates to an unreasonable degree, the courts

63. *United States v. United States Brewers' Association*, 239 Fed. 163 (W.D. Pa. 1916); *Egan v. United States and Union Electrical Company v. United States*, 137 F. (2d) 369 (C.C.A. 8th 1943), cert. den., 320 U. S. 788 (1943); *People v. Gansley*, 191 Mich. 357, 158 N. W. 195 (1916); *Smith v. Higinbotham*, 187 Md. 115, 48 A. (2d) 754 (1946). In the last-cited case the state law involved was construed not to prohibit an incorporated local bar association from conducting a "bar primary" on judicial candidates and publishing the results. Accord, *La Belle v. Hennepin County Bar Association*, 206 Minn. 290, 288 N. W. 788 (1939).

64. *State v. Russell*, 20 Ohio C. C. 551, 11 Ohio C. D. 299 (1900); *State ex rel. LaFollette v. Kohler*, 200 Wis. 518, 228 N. W. 895 (1930); *Adams v. Lansdon*, 18 Idaho 483, 110 Pac. 280 (1910).

65. *Burroughs and Cannon v. United States*, 290 U. S. 534 (1934); *State ex rel. LaFollette v. Kohler*, supra note 64.

66. *Ex parte Curtis*, 106 U. S. 371 (1882); *United States v. Wurzbach*, 280 U. S. 396 (1930).

67. *United Public Workers v. Mitchell*, 330 U. S. 75 (1947); *Oklahoma v. United States Civil Service Commission*, 330 U. S. 127 (1947); *McAuliffe v. New Bedford*, 155 Mass. 216, 29 N. E. 517 (1891).

68. There was dissent by Justice Bradley on this point in the *Curtis* case, supra note 66; and by Black and Rutledge, JJ, in the *United Public Workers* case, supra note 67.

69. *State ex rel. Schumacher v. Markham*, 160 Wis. 431, 152 N. W. 161 (1915); *McKinney v. Barker*, 180 Ky. 526, 203 S. W. 303 (1918); *Bradley v. Clark*, 133 Cal. 106, 65 Pac. 395 (1901); *State v. Russell*, 20 Ohio C. C. 551, 11 Ohio C. D. 299 (1900); *In re Lance*, 55 Misc. 13, 106 N. Y. Supp. 211 (1907).

have sometimes overthrown them. Thus a provision in a Wisconsin corrupt practices act which prohibited a private citizen, not a candidate or a member of a political committee, from spending money on an election campaign in a county other than his own, was held to violate the free speech and press guarantees of the State Constitution.⁷⁰ A Nebraska law designed to enforce non-partisanship in the election of certain officers was also overthrown on similar grounds.⁷¹

Because of its impact upon the freedom of individuals organized into an association to carry on political activities directly related to the welfare of the members of the group, the prohibition on political *expenditures* by labor unions is the most vulnerable part of section 304 of the Taft-Hartley Act, from the viewpoint of constitutionality.⁷² The prohibition on *contributions* by labor unions to political parties and candidates, which was established originally by the War Labor Disputes Act in 1943, is less vulnerable to attack, and spokesmen for organized labor have exhibited much less concern about it. No attempt was made to initiate a test of its constitutionality during the period when the War Labor Disputes Act was in force.⁷³ A similar provision in a Texas statute was challenged; but its constitutionality was sustained by the Texas Court of Civil Appeals.⁷⁴ The issue was not pressed further.

The prohibition on union expenditures involves a more serious invasion of political freedom. Individuals acting in concert as members of labor unions undoubtedly have rights guaranteed by the First and Fifth Amendments which limit the authority of Congress in dealing with them, and by the Fourteenth Amendment which limits in similar degree the authority of the states.⁷⁵ Freedom of speech, press, assembly and petition are rights viewed by the courts as having special significance in our system of demo-

70. *State v. Pierce*, 163 Wis. 615, 158 N. W. 696 (1916).

71. *State ex rel. Ragan v. Junkin*, 85 Neb. 1, 122 N. W. 473 (1909); see also *Louthan v. Commonwealth*, 79 Va. 196 (1884).

72. Cf. Sutherland, "The Constitutionality of the Taft-Hartley Law," 1 *Industrial and Labor Relations Review* 177, 183 (1948).

73. In *De Mille v. American Federation of Radio Artists*, 187 P. (2d) 769 (Cal. 1947), affirming 175 P. (2d) 851, cert. den., 333 U. S. 876 (1948), it was held that this section of the War Labor Disputes Act did not prohibit an assessment by a union on its membership to raise funds for opposing ratification of a proposed anti-closed shop amendment. Accord, *Warner v. Screen Office Employees Guild*, 16 Lab. Rel. Ref. Man. 544 (Cal. Super. Ct. 1945).

74. *American Federation of Labor v. Mann*, 188 S. W. (2d) 276 (Tex. Civ. App. 1945).

75. *Hague v. Committee for Industrial Organization*, 307 U. S. 496 (1939); *Local 309, United Furniture Workers of America, CIO v. Gates*, 75 F. Supp. 620 (N.D., Ind. 1948).

cratic government because of the fundamental importance they bear in the maintenance and functioning of that system. For this reason, the Supreme Court has stated, "only the gravest abuses, endangering paramount interests, give occasion for permissible legislation."⁷⁶

The position that will be taken by the Supreme Court on the constitutionality of the political expenditures feature of the law, as it concerns labor unions, can, of course, only be conjectured. It will be governed by the outcome of a weighing of the immediacy and importance of the asserted dangers in unrestricted expenditure of union funds in elections as against the resulting encroachment upon freedom of political action by an association of individuals organized to promote their economic welfare. The *CIO News* case revealed the significant fact that four of the present members believe that Congress with this type of restriction has unduly infringed upon rights guaranteed by the First Amendment and by the due process clause of the Fifth Amendment. Wholesale denial of the right of a labor association to expend its funds for the purpose of influencing elections, they declared, could not be justified on the grounds that such restriction was necessary to keep elections pure, to prevent undue influence by labor groups upon governmental policies, or to protect the financial interests of minority elements in those organizations.⁷⁷ Lower court rulings, with one exception, support this view.⁷⁸ There would seem to be a strong likelihood that when the issue is finally faced, a majority of the Supreme Court will accept the thinking already subscribed to by Mr. Justice Rutledge and his supporting brethren on this point.

The constitutionality of that part of the provision which concerns direct contributions by labor unions to parties or candidates stands on somewhat firmer ground. The "purity of elections" and

76. *Thomas v. Collins*, 323 U. S. 516, 530 (1945). For other declarations in this vein see *Thornhill v. Alabama*, 310 U. S. 88, 95 (1940); *De Jonge v. Oregon*, 299 U. S. 353, 364 (1937); *Grosjean v. American Press Co., Inc.*, 297 U. S. 233, 250 (1936); *Craig v. Harney*, 331 U. S. 367, 383 (1947), *Murphy, J.*, concurring.

77. *United States v. Congress of Industrial Organizations et al.*, 68 S. Ct. 1349, 1366 ff (1948).

78. *United States v. Congress of Industrial Organizations et al.*, 77 F. Supp. 355 (1948), *supra* p. 14; *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 69 N. E. (2d) 115 (1946), *supra* p. 11. Invalidations of political expenditures limitations on labor unions in Alabama and Colorado were based on reasons other than interference with individual rights. *Supra* p. 10 and note 33. In *United States v. Painters Local Union No. 481, et al.* 79 F. Supp. 516 (1948), *supra* p. 16, however, the Court declared that the Taft-Hartley Act limitation on political expenditures "was not invalidated by its incidental effect in restraint upon the freedoms protected by the First Amendment."

"undue influence" arguments have greater validity as justifications, since the affairs and conduct of political parties and their candidates for public office are involved in a more direct sense. What might prove to be the fatal constitutional infirmity of this feature of the law is its discriminatory character. So long as other associations, particularly employer associations representing economic and political interests in opposition to those of organized labor, are left free to make contributions to political parties or candidates, a strong argument can be raised against the constitutionality of a law which singles out labor unions for repressive regulation.⁷⁹ As has been seen, efforts in Congress to make this feature of the law fairer by including within its scope associations representative of employer interests have so far been unsuccessful.

There is a possibility that the Taft-Hartley Act restriction on union political activities will be liberalized by Congress even before a determination of its constitutionality in its present form is made by the Supreme Court. Shortly after the passage of the law, Senator Hatch, of New Mexico, and Senator Aiken, of Vermont, introduced a bill which would have stricken from the act the prohibition on expenditures by labor unions for political purposes.⁸⁰ Later Representative McDonough, of California, introduced an amendatory bill which would permit labor unions to make expenditures for political purposes, provided the members thereof vote to make union funds available for such use.⁸¹ Neither bill was acted upon; but they were

79. In the *United Public Workers* case, *supra* note 67, a dissent by Black, J., emphasized strongly as grounds for invalidity the discriminatory aspect of the Hatch Act limitations on political activities by government employees.

80. S. 1613, 80th Cong., 1st Sess. (1947). The bill would not have repealed the prohibition on political expenditures by corporations, nor the prohibition on direct contributions to parties and candidates by labor unions.

81. H. R. 4193, 80th Cong., 2nd Sess. (1948). The McDonough proposal is suggestive of present British policy in dealing with the problem of labor union political expenditures. In the case of *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87, decided Dec. 21, 1909, it was held that political contributions by labor unions were illegal because this activity did not lie within the statutory powers of registered trade unions. In 1913 the Parliament modified this ruling by incorporating into the Trade Union Act of that year (2 and 3 Geo. V, c. 30) provisions authorizing trade unions to expend their funds for political purposes as broadly defined in the act, provided (1) a majority of the union members voting by secret ballot at a meeting for this purpose approved the principle of creating a political fund and (2) any union member could claim exemption from political assessments by a written statement so indicating his desire. These restrictions were made stronger in the Trade Disputes and Trade Union Act of 1927 (17 and 18 Geo. V, c. 22), which required that assessments for political purposes must be kept in a fund separate from general union funds, and that before a member could be assessed for the political fund he must indicate in writing his willingness to be so assessed. In other words, the emphasis was changed from "contracting out"

indicative of a feeling in the 80th Congress that the harshness of the restrictive legislation should be mitigated in some degree.

In its first report on March 15, 1948, the Joint Committee set up by the Taft-Hartley Act to observe its operation and make recommendation for needed changes gave attention to this feature of the law. A majority of the members of the Committee preferred to follow a policy of watchful waiting, pending disclosure of judicial attitudes on the scope and application of the section.⁸² A minority report, signed by four members of the Committee, was filed on April 1, shortly after the expenditures provision had been held unconstitutional by the District Court in the *CIO News* case. They urged immediate repeal of the ban on labor union expenditures.⁸³ No doubt the subsequent ruling of the Supreme Court, holding that the act does not cover publication of political endorsements in union-supported periodicals, has served to diminish in considerable measure the sentiment in Congress for repeal or modification of the expenditures feature.

CONCLUSION

In any event, the assumptions upon which the Taft-Hartley Act restraints on political activities of labor unions rest will continue to be questioned in Congress and in the national forum. This legislation proceeds on the assumptions (1) that of all the many kinds of pressure group organizations which spend money to influence elections, only labor unions, along with corporations, threaten the purity of our elections and the capacity of the government to function in the general interest; (2) that minority members of labor unions are unjustly exploited by the majority by being compelled to give financial assistance in carrying on political programs to which they do not subscribe; and (3) that the effective, practical way to prevent these evils and wrongs is to pass laws making the use of union funds in connection with elections a crime. Without attempting to examine each of these assumptions at length, it may be observed that with regard to the first point there is reason

to secure exemption to "contracting in" to insure liability. In 1946, by repealing the Trade Dispute and Trade Union Act of 1927, the present Labor Government returned to the "contracting out" system of the 1913 law. Cf. Rothschild, "Government Regulation of Trade Unions in Great Britain: II," 38 *Columbia Law Review* 1335 at 1356 ff, 1379 (1938) and 4 *Labor and Industry in Britain*, at 40, 78 (1946).

82. Sen. Rep. No. 986, 80th Cong., 2nd Sess. 39 (1948). Senator Ball, of Minnesota, was chairman of the Committee.

83. Sen. Rep. No. 986, 80th Cong., 2nd Sess., pt. 2, 15 (1948). The minority was made up of Senators Pepper, of Florida, and Murray, of Montana, and Representatives Lesinski, of Michigan, and Kelley, of Pennsylvania.

for believing that, on the whole, more good than harm will result from use of their common funds by labor unions to stimulate interest and activity in political affairs among the rank and file of their organizations. If the democratic system of government is sound it will thrive and be strengthened by group activities which tend to produce a better informed, more politically active citizenry. Competing group interests can be trusted to prevent a wholly distorted, self-interested viewpoint from becoming dominant in national policy, so long as the channels of information and political debate are kept free.

On the second point it should be noted that the need for laws protecting the minority in a labor union against expenditure of the common funds on political projects which they may have no interest in supporting is not the same as the need for laws of this nature on behalf of the stockholders in a business corporation. The purposes for which a labor union is formed are not the same as those which give rise to a business corporation.⁸⁴ In increasing numbers the constitutions or charters of labor organizations state as one of the objectives of such associations the furtherance of interests of their members through advocacy of public policies and support of candidates deemed favorable to labor's welfare and

84. A number of states recognize the distinction between ordinary business corporations and those formed for charitable or political purposes by exempting the latter from prohibitions on the expenditure of funds for political objectives. Cf. 25 Purdon's Pennsylvania Statutes, Anno., sec. 3225 (b) (1947 Supp.); 39 McKinney's Consolidated Laws of New York, sec. 671.

85. This point was well expressed by the Supreme Court of California in a recent case. The question involved was the right of a local union to impose an assessment of one dollar on each member for the purpose of raising a fund to be used in opposing popular ratification of a proposed anti-closed shop amendment to the California State Constitution. The Court upheld the authority of the union to make the assessment against the contention that it infringed upon the constitutional rights of a member who personally favored adoption of the amendment. The analogy between the functioning of a labor association and of a governmental body in this respect was commented on by the Court as follows:

"Majority rule necessarily prevails in all constitutional government, including our federal, state, county and municipal bodies, else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles the benefit as perceived by the majority prevails. And the individual citizen would raise but a faint cry of invasion of his constitutional rights should he seek to avoid his obligations because of a difference in personal views. A member of a voluntary association should not be permitted successfully to seek a similar avoidance." *De Mille v. American Federation of Radio Artists*, 31 Cal. (2d) 139, 187 P. (2d) 769, 776 (1947), affirming, 175 P. (2d) 851; cert. den., 333 U. S. 876, 906 (1948). Accord, *Warner v. Screen Office Employees Guild* (Cal. Super. Ct.) 16 Lab. Rel. Ref. Man. 544 (1945).

through carrying on political educational programs among the membership. The implication is that the individual member, in joining the organization, approves of its carrying on such activities, although he may not endorse specific actions taken by the leadership in this sphere. But so long as the organization leadership is responsible to the membership for decisions it makes and there are democratic processes for expression of criticisms of those decisions by the rank and file, the dissident individual member has no just ground for complaint.⁸⁵ Labor unions need to be governed by the rule of unanimity in these matters no more than in other matters such as, for example, the terms of a collective bargaining agreement.

On the last point it may be said that the experience in the past with the punitive, negative approach to the problem of money in elections does not augur well for success of this approach as concerns the use of labor union funds for political purposes. Experience in the related matter of prohibition of political contributions by corporations demonstrates that, while this kind of regulation may be generally observed in the letter, indirect or hidden contributions from corporate sources are still a factor in political campaign finance.⁸⁶ More emphasis upon prompt and complete publicity rather than upon limitation and prohibition may well be the answer to the problem as it relates to sources as well as to amounts of expenditures.⁸⁷

One final observation is in order. If section 304 of the Taft-Hartley Act is found to be constitutional, administratively feasible, and effective in achieving its purpose, its ultimate and logical conclusion may well be the establishment of governmental controls over a wide range of group political activities. Such activities have become an important aspect of American political life. Beyond governmental prohibition of political campaign contributions and expenditures lies governmental intervention in many other phases of labor union activity on the political front. If, to keep elections pure, to prevent undue influence on governmental officials, and to protect minority elements in a labor union, laws restricting the

86. The case of *Egan v. United States*, 137 F. (2d) 369 (C.C.A. 8th 1943), indicates one method of evasion, the payment of bonuses or the "padding" of expense accounts of corporate officers with the expectation that these funds are to be contributed by them to parties or candidates. In that instance corporate funds had been transferred by various subterfuges into the possession of officers of the corporation, who used them to influence the election of members of the Missouri Legislature deemed friendly to the corporation's interests.

87. Cf. Louise Overacker, *Presidential Campaign Funds* (1946), 47 ff. and p. 70; Lederle, "Political Committee Expenditures and the Hatch Act," 44 Mich. L. Rev. 294 (1945).

use of the group's funds in connection with public elections are required, it is not difficult to see that similar restraints may come to be regarded as necessary also upon the use of such funds for maintaining lobbyists at national and state capitals, or for maintaining central research and informational services. Group activities of these kinds have political connotations and effects and involve the expenditure of common funds no less than the making of campaign contributions and expenditures.

Moreover, if restraints of this character are appropriate for labor unions, they may easily come to be regarded as necessary and appropriate for other groups and associations which espouse and seek to achieve objectives in the realm of public policy. The halter devised for labor unions may be found to fit just as well the National Grange, the American Legion, the American Medical Association, or any of the many other organizations which now play an active and important role in elections and in the functioning of the legislative and administrative branches of government.⁸⁸ Either there will be a retreat in the near future from the policy incorporated in this section of the Taft-Hartley Act, through judicial invalidation of it in whole or in part or by Congressional revision of its terms after more mature deliberation, or we shall be under a compulsion to move forward, sooner or later, to an extension of the policy of restriction into new areas of group political activity.

88. During discussion of this section of the Taft-Hartley Bill in the Senate, Senator Taft observed in reply to a question on this point that "if any abuses arise with respect to other organizations [than labor unions and corporations] we can extend the provisions of the law to other groups." 93 Cong. Rec. 6441 (1947).